

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 1459

January 27, 2014

SUMMARY OF BILL: Broadens criminal responsibility under Tenn. Code Ann. § 39-11-402 to include members of a criminal enterprise that record a criminal offense through some audio-visual medium with the intent of participating in the offense in some capacity.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$697,900/Incarceration*

Increase Local Expenditures – exceeds \$17,400/Incarceration**

Assumptions:

- Tennessee Code Annotated does not define “criminal enterprise.” The Federal Bureau of Investigation (FBI) defines a criminal enterprise as a “group of individuals with an identified hierarchy, or comparable structure, engaged in significant criminal activity.” (<http://www.fbi.gov/about-us/investigate/organizedcrime/glossary>).
- According to the FBI’s 2011 National Gang Threat Assessment, 48 percent of violent crimes in most jurisdictions are committed by gangs.
- It is assumed that three percent of all felonies in Tennessee are committed by a member of a criminal enterprise. It is further assumed that three percent of those crimes are recorded by one of the members for that member’s gratification or the gratification of others and the member had the intent to participate in the offense in some way.
- According to the Department of Correction (DOC), there has been average number of felonies committed in Tennessee over the past three years for the following:
 - Class A felonies – 476;
 - Class B felonies – 2,515;
 - Class C felonies – 5,583;
 - Class D felonies – 3,641; and
 - Class E felonies – 2,853.
- The bill would result in the following additional felony admissions:
 - Class A felonies – 1 admission every 2 years (476 admissions x .03 criminal enterprise x .03 member recorded offense = 0.43);
 - Class B felonies – 2 admissions per year (2,515 admissions x .03 criminal enterprise x .03 member recorded offense = 2.26 admissions);
 - Class C felonies – 5 admissions per year (5,583 admission x .03 criminal enterprise x .03 member recorded offense = 5.02 admissions);

- Class D felonies – 3 admissions per year (3,641 admission x .03 criminal enterprise x .03 member recorded offense = 3.28 admissions); and
 - Class E felonies – 3 admissions per year (2,853 admissions x .03 criminal enterprise x .03 member recorded offense = 2.57 admissions).
- According to the DOC, the average operating cost per offender per day for calendar year 2014 is \$66.29.
- The average time served for a Class A felony is 15.09 years (5,511.62 days).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact for Class A felonies.
- A recidivism discount of 48.29 percent applies, but due to the low number of Class A felony admissions added by this legislation, the recidivism discount does not impact the incarceration cost for Class A felonies.
- The annualized cost of one additional Class A felony admission every two years is \$182,682.64 $[(\$66.29 \times 5,511.62 \text{ days}) / 2]$.
- The average time served for a Class B felony is 5.60 years (2,045.4 days).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact for Class B felonies.
- According to the DOC, 48.29 percent of offenders will re-offend within three years of their release. A recidivism discount of 48.29 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .4829 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one additional offender per year [2 offenders – 1 (recidivism discount)] serving 5.60 years (2,045.4 days) for a total of \$135,589.57 $(\$66.29 \times 2,045.4 \text{ days})$.
- The average time served for a Class C felony is 2.98 years (1,088.45 days).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one (5 x .1178) additional admission for a total of six (5 + 1).
- According to the DOC, 42.52 percent of offenders will re-offend within three years of their release. A recidivism discount of 42.52 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (6 offenders x .4252 = 3 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on three additional offenders per year [6 offenders – 3 (recidivism discount)] serving 2.98 years (1,088.45 days) for a total of \$216,460.05 $(\$66.29 \times 1,088.45 \text{ days} \times 3 \text{ offenders})$.
- The average time served for a Class D felony is 2.06 years (752.42 days).

- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact for Class D felonies.
- According to the DOC, 42.52 percent of offenders will re-offend within three years of their release. A recidivism discount of 42.52 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x .4252 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two additional offenders per year [3 offenders – 1 (recidivism discount)] serving 2.06 years (752.42 days) for a total of \$99,755.84 (\$66.29 x 752.42 days x 2 offenders).
- The average time served for a Class E felony is 1.31 years (478.48 days).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact for Class E felonies.
- According to the DOC, 32.03 percent of offenders will re-offend within three years of their release. A recidivism discount of 32.03 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x .3203 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two additional offenders per year [3 offenders – 1 (recidivism discount)] serving 1.31 years (478.48 days) for a total of \$63,436.88 (\$66.29 x 478.48 days x 2 offenders).
- The total increase in state expenditures is \$697,924.98 (\$182,682.64 + \$135,589.57 + \$216,460.05 + \$99,755.84 + \$63,436.88). The bill would also create criminal responsibility for misdemeanor offenses.
- The latest weighted caseload study performed by the National Center for State Courts, October 2013, showed that 9,252 misdemeanor charges were filed in trial courts during FY12-13. It is assumed that there are 10 misdemeanors handled in general sessions courts for every one that makes it to the trial court level. It is assumed that there were 92,520 misdemeanors last year in Tennessee.
- It is assumed that three percent of all felonies in Tennessee are committed by a member of a criminal enterprise. It is further assumed that three percent of those crimes are recorded by one of the members for that member's gratification or the gratification of others and the member had the intent to participate in the offense in some way.
- The bill would result in an additional 83 misdemeanor convictions (92,520 charges x .03 criminal enterprise x .03 member recorded offense = 83.27 convictions) each year.
- Population growth would increase the misdemeanor convictions by 10 (83.27 x .1178 = 9.81) to 93 (83 + 10).
- It is assumed that each misdemeanant will serve at least three days in a local jail.
- The average cost of housing an inmate in a local jail in 2014 is \$62.52 per day.

- The bill will increase local expenditures by at least \$17,443 (93 misdemeanants x 3 days x \$62.52).
- The bill would only result in approximately 13 new felony cases and 93 new misdemeanor cases each year. That is approximately one felony case every three years for each judicial district and approximately three misdemeanor cases per judicial district each year. It is assumed that the District Attorneys General Conference, the District Public Defenders Conference, and the Administrative Office of the Courts can handle the minor increase in their felony and misdemeanor caseloads within existing resources.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

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